

**BEFORE THE
FEDERAL COMMUNICATIONS Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission’s Rules to Facilitate the Provision of)	RM-10586
Fixed And Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162 and)	
2500-2690 MHz Bands)	
)	
Part 1 of the Commission’s Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service to Engage)	
in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission’s Rules With Regard to Licensing)	RM-9718
in the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for)	
the Gulf of Mexico)	
)	

PETITION FOR RECONSIDERATION

Cheboygan-Otsego-Presque Isle Educational Service District/PACE Telecommunications Consortium (“Petitioner”), pursuant to Section 1.429(a) of the Commission’s rules, hereby petitions the Commission to reconsider certain aspects of the *Report and Order and Further Notice of Proposed Rulemaking* (“Order”)¹ in the above-referenced proceeding. Petitioner is [licensee of Broadband Radio Service (“BRS”) spectrum, lessee of various BRS and Educational Broadband Service (“EBS”) licenses and is currently operating in [Market]?].

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

I. The Commission Should Reduce the Size of Areas to Be Transitioned from Metropolitan Economic Areas to Basic Trading Areas

Petitioner seeks reconsideration of paragraph 82 and Section 27.1231(a) of the rules in which the Commission states that transitions of markets must occur by Metropolitan Economic Areas (“MEAs”). Such large transition areas are impractical, cumbersome and prohibitive to any entity who desires to transition its market.² The administrative burden alone of transitioning such a large area is overwhelming. A typical MEA covers an entire state. There are numerous licensees *in each market* in the MEA that must be notified and who are unlikely to uniformly agree to a Proponent’s transition plan. The cost of engineering a plan, then notifying and negotiating with numerous licensees, as well as transitioning them, will be a tremendous burden to any small operator, not to mention the cost for providing downconverters for all ITFS receive sites in such a large area.³ Such a task would be daunting for a single-market operator like Petitioner if it has to transition all the EBS receive sites in its MEA.

Even the larger operators seem concerned about the breadth of such a task due to the size of the areas to be transitioned. Because the areas to be transitioned are too large, the Commission has basically created a scenario in which no one Proponent will want to transition an MEA single-handedly and most will wait to see if someone else will take the lead before they are forced to take action at the last minute to save their license.⁴ While the Commission has allowed for Co-Proponents to bear such costs and administrative

² See Separate Statement of Commissioner Jonathan S. Adelstein, issued on July 29, 2004 (FCC 04-135), in which he stated “I am disappointed, though, that the Order moves forward with a transition process that is based on major economic areas (MEAs). The BRS and ITFS services are local services, and I believe that broadband deployment for the foreseeable future will be rolled out on a relatively localized basis. I am concerned that the obligation to transition an entire MEA will make it exceedingly difficult for proponents to effectuate transitions in their particular market.”

³ See Paragraph 94 of the Order in which each proponent “must install at every eligible EBS receive site a downconverter designed to minimize the reception signals from outside the MBS.

⁴ Since the majority of BCS licenses are held by Sprint, Nextel and Clearwire, almost all other licensees will wait for these larger corporations to take the lead in transitioning an MEA because they are just unable to bear the costs of such a task as the rules are currently written.

procedures, it is already apparent among industry operators that such partnerships are unlikely to occur between competitors. Rather than being an incentive to complete transitions quickly, the rules are currently structured as a game of who will “break” first to take on such a cumbersome and costly task.

Petitioner requests that the Commission reconsider transition by MEA and instead, reduce transition areas to Basic Trading Areas (“BTA”). If reduced, transitions are much more likely to occur quickly, as either the BTA authorization holder or an operator of incumbent spectrum in the BTA, if one exists, would be much more willing to take on such a manageable area, either individually or as Co-Proponents. Reducing the size of such transition areas would make transitioning more appealing and allow smaller operators to be Proponents as well. A Proponent should be afforded the opportunity to transition as large of an area as desired, with the smallest area being a single BTA.

If such change is implemented under Section 27.1231 of the new rules, and the Proponent is an incumbent licensee or lessee of a Geographical Service Area with a 35 mile protected service area that overlap more than one BTA, then the Proponent should be able to elect to transition one or more BTAs, as desired. Where the Proponent is an incumbent licensee or lessee, the FCC should also incorporate into this rule that notice must be given to the BTA holder, as such authorization holders do not always hold station licenses.⁵ Where the BTA holder seeks to transition an incumbent within its BTA that overlaps into an adjacent BTA, the BTA authorization holder should only be obligated to transition the BTA plus that licensee’s GSA, but not additional BTAs, unless the BTA authorization holder chooses to do so either individually or as a Co-Proponent.

In addition, it is requested that the Commission reconsider its statement in paragraph 79 of the Order and in Section 27.1231(d) of the new rules in which only a

⁵ Section 27.1231(d) of the FCC rules requires that a Pre-transition data request be send to “each EBS and BRS licensee”. Since not all BTA authorization holders actually hold a station license within their BTA, the rule should clarify that the BTA authorization holder, if not the Proponent, should also be notified.

BRS or EBS licensee or EBS lessee is permitted to act as a Proponent and initiate a transition. Petitioner requests that the Commission broaden this definition to allow BRS lessees to also initiate transitions, as there are operators of such spectrum who are not licensees but who would like the opportunity to transition their markets.

Finally, the rules need to address that serving a BRS or EBS licensee pursuant to its information listed on the Universal Licensing System is sufficient. Despite the Commission's attempts to update this database, there are still addresses and licensee name information that is inaccurate. A Proponent should not have to use alternative methods to find such licensees, but should be able to proceed as if the licensee had agreed to the transition plan. Such a rule would encourage licensees to keep their contact information current and to once again verify their license information. Furthermore, the Commission should issue public notices whenever a Proponent files a notice of initiation is filed as well as its Post-transition notice so that licensees that should have been notified but may not have been have an alternative method in which to become aware of a Proponent's actions.

II. Ownership of Wireless Spectrum by Cable Operators and ILECs

Petitioner seeks reconsideration of the Commission's decision to allow cable operators and ILECs to acquire MDS spectrum for the provision of data services. Allowing such entities access to the BCS spectrum will provide them with an opportunity to acquire such spectrum for the sole purpose of thwarting competition. The Commission states that eligibility restrictions are only imposed when there is a significant likelihood of substantial competitive harm and eligibility restrictions will be effective in addressing such harm, relying on "market forces" to guide license assignment.⁶ However, since the ability to use BCS spectrum to provide data services is a recent development, and given

⁶ See paragraph 175 of the Order.

that the cable-cross ownership prohibitions were believed to prevent any ownership of such spectrum by a cable operator, there are no relevant market facts and circumstances to cite in which to support this position. Indeed, the belief that their entry into this service has been restricted has been a relief, as both industries have long histories of competitive business practices.

However, if the Commission were to allow use of this spectrum by such entities, it would further prohibit the development of such systems and encourage the warehousing of spectrum by large entities hoping to delay or quash competition. Cable companies and ILECs have been adamant about protecting access to their networks, preventing competition whenever possible, while demanding access to spectrum used by their competitors. Rather than allowing such use because the Commission does not read the Telecommunications Act as preventing it, such entities should prove how and why they need such access, considering the amount of resources already available to them and the limited budget of most small operators in this band with whom they would compete.

CONCLUSION

In conclusion, the Commission is to be congratulated for making such great strides in improving the regulatory environment for BCS systems. However, Petitioner respectfully requests that the Commission reconsider the issues raised above to ensure that such new rules are fairly and adequately applied in order for new services to be provided on an expedient basis.

Respectfully submitted,

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Engineer

January 10, 2005